

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 13-42 and 44-47 are pending in this application. Claims 45-47 are added by the present response without introducing new matter.

In the outstanding Office Action, Claims 13-14, 18-26, 28-30, 33-41 and 44 were rejected under 35 U.S.C. 103(a) as unpatentable over Microsoft Windows NT (herein, "WinNT") in view of Myer et al. (U.S. Pat. No. 6,615,088, herein "Myer"); Claims 16, 17, 31 and 32 were rejected under 35 U.S.C. 103(a) as unpatentable over WinNT and Myer in view of Battat et al. (U.S. Pat. No. 5,958,012, herein "Battat"); and Claims 27 and 42 were rejected under 35 U.S.C. 103(a) as unpatentable over WinNT and Myer in view of Saito et al. (U.S. Pat. No. 6,523,696, herein "Saito").

Addressing now the rejection of Claims 13-14, 18-26, 28-30, 33-41 and 44 under 35 U.S.C. §103(a) as unpatentable over WinNT and Myer, that rejection is respectfully traversed.

Claim 13 recites, in part,

determining availability of one or more multimedia services available via one or more of said non-computer home devices connected to said home network; and

displaying a hierarchical view representative of said one or more of said non-computer home devices connected to said home network and said one or more available multimedia services related thereto.

Claims 28 and 44-47 recite similar features.

The outstanding Office Action, on page 3, line 2 states that Screenshot 2 of WinNT "shows a hierarchical display of devices that are connected and available to the computer network; for example, the displayed connected devices include the availability of devices providing related multimedia services such as an audio CD drive, a printer, etc."

However, Screenshot 2 of WinNT does not show displaying a hierarchical view representative of said one or more of said non-computer home devices connected to the home network and said one or more available multimedia services related thereto.

In other words, Screenshot 2 of WinNT shows an icon of a CD drive, several hard-drives, and several folders. However, nowhere does Screenshot 2 of WinNT show a single hierarchical view showing devices and available multimedia services related to those devices.

For example, in Screenshot 2 of WinNT “Audio CD (E:)” and “Printers” are shown. Although the CD and Printers icons represent multimedia services related to the computer device “My Computer” these icons do not represent available multimedia services. In WinNT these icons are permanent and exist whether or not these services are available. If the device had no audio CD available, the icon entitled “Audio CD (E:)” would still show up. The invention recited in Claim 13 is useful as a user may want to see what available multimedia services a device includes without having to click on the specific services to see if they are actually available.

Therefore, Screenshot 2 of WinNT does not describe or suggest, “determining availability of one or more multimedia services available via one or more of said non-computer home devices connected to said home network and displaying a hierarchical view representative of said one or more of said non-computer home devices connected to said home network and said one or more available multimedia services related thereto,” as is recited in Claim 13.

Additionally, Claims 45-47 are added to recite the features of the hierarchical view in greater detail thus, further distinguishing the present invention from the WinNT reference.

Thus, Claim 13 and similarly Claims 28 and 44-47 patentably distinguish over WinNT. Further, Myer does not cure the above noted deficiencies of WinNT.

Additionally, in rejecting a claim under 35 U.S.C. §103(a), the USPTO must support its rejection by “substantial evidence” within the record,¹ and by “clear and particular” evidence² of a suggestion, teaching, or motivation to combine the teachings of different references. In the present case, there is no substantial evidence, nor clear and particular evidence, within the record of motivation for modifying WinNT by incorporating Myer’s home network. Without such motivation and absent improper hindsight reconstruction,³ a person of ordinary skill in the art would not be motivated to perform the proposed modification. Additionally, a person skilled in the art would not have considered using WinNT at the priority date of the present application to control non-computer home devices connected to a home network as WinNT was designed for use in a business/workstation environment as opposed to a home/PC environment.

Therefore, Accordingly, Applicant respectfully submits that independent Claim 13 and similarly independent Claims 28 and 44-47 patentably distinguish over WinNT and Myer considered alone or together in any proper combination.

Moreover, with respect to the further dependent Claims 16, 17, 27, 31, 32 and 42 in light of the above discussion, Applicant respectfully submits that those claims also

¹ In re Gartside, 203 F3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000) (holding that, consistent with the Administrative Procedure Act at 5 USC 706(e), the CAFC reviews the Board’s decisions based on fact findings, such as 35 U.S.C. §103(a) rejections, using the “substantial evidence” standard because these decisions are confined to the factual record compiled by the Board.)

² In re Dembiczak, 175 F3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (“We have noted that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, although “the suggestion more often comes from the teachings of the pertinent references.” The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular.”) (emphasis added).

³ See MPEP 2141, stating, as one of the tenets of patent law applying to 35 USC §103, that “[t]he references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention.”

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distinguish over the applied art, particularly as none of these further cited teachings to Saito and Battat are believed to overcome the above-noted deficiencies of WinNT and Myer.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 13-42 and 44-47 is earnestly solicited.

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